

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4097 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
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MIYA MAHMAD ADAMBHAI MEMON

Versus

COLLECTOR

Appearance:

MR N.V.ANJARIA for MR SN SHELAT for Petitioner
MR MA BUKHARI AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 18/02/2000

ORAL JUDGEMENT

1. By means of filing this petition under Article 226 of the Constitution of India the petitioner has challenged the order passed by the State of Gujarat, Annexure D to the petition, whereby order dated 31.1.1986 - Annexure C recorded by the Collector, Surat, ordering the petitioner to remove encroachment on the gauchar land bearing S.No. 82 of village Vareth, Taluka Mandvi, District Surat, came to be confirmed.

2. It is the case of the petitioner that he is in

possession and occupation of land bearing Block No. 75 of S.No. 82, situated at village Vareth, Taluka Mandvi, District Surat. The said land is vested in Vareth Gram Panchayat. Out of the said land, land admeasuring 1 A. 38 gunthas (i.e. 2100 sq.mt.) was allotted to the petitioner's father -Adamhai Husain- on 1.11.1963 on rental basis and permission to construct house on the said land was also granted. The petitioner has been utilising the said land for the purpose of coal depot. There is construction of house, Vakhar and compound wall on the said land. It is further case of the petitioner that the dispute arose in respect of this land on the ground that the Gram Panchayat did not obtain prior approval of the Collector, which ultimately came to be resolved when it was agreed that the construction would be regularized and that the Public Works Department be handed over possession of 1 A. 15 Gunthas of land and that 0.A 23 Gunthas be retained by the petitioner. It is further case of the petitioner that in spite of the aforesaid arrangement the petitioner is being harassed by the revenue authorities. Therefore the petitioner approached respondent No.2 and respondent No.2 passed an order on 12.7.1976 and directed the Collector that when the applicant has constructed house over land in question and is carrying on his business, at this stage removal of construction would cause great hardship to him and in view of this the Collector should examine as to whether there is any need of such of the land in question. It is further case of the petitioner that Mamlatdar and Revenue Authorities have recommended the regularization but the State Government by letter dated 27.10.1985 has refused to regularize the same and conveyed by letter dated 31.1.1986 that his application for regularization was rejected as per order at Annexure C. Against the said order also the petitioner preferred revision before the respondent No.2 which came to be rejected. Hence the present petition.

3. Though affidavit-in-reply is not filed by the State of Gujarat, relying upon the impugned order, the petition is contested.

4. It was contended by learned advocate Mr. Anjaria for Mr. Shelat that the Collector did not examine the merits of the contentions and instead of finding out as to the actual requirement of the land in question, passed the order dated 31.1.1986. He also contended that respondent No.2 also ignored the earlier order dated 30.1.1973. What was stressed was that the Collector overlooked that it was for him to decide about the regularization rather than seeking direction from the

State Government since respondent No.2 i.e., Additional Chief Secretary, Revenue Department, has under the powers vested in him permitted the regularization of the land. It was emphasized that the respondent No.2 himself has ignored the earlier direction given by the predecessor in office. It was also stressed that there was no such demand from the village people for the very land since the said land is not useful for gauchar and the Panchayat has also no objection for the letting out of the land in favour of the petitioner.

5. Learned AGP Mr. MA Bukhari for the respondents has countered the submissions made by learned advocate for the petitioner and supported the order dated 31.1.1986 recorded by the Collector and confirmed by the Secretary, Revenue Department in revision and contended that the Collector, after applying mind, has recorded the order and the revisional authority has also considered all the aspects as well as previous order recorded by his predecessor in the office.

6. Having heard learned advocates for the parties and on having perusal of the impugned orders, it is clear that the said land was vested in the Gram Panchayat. The petitioner's father was granted lease in the year 1963 on rental basis and there upon the petitioner has made construction of a house which has been utilizing for the purpose of coal depot. I have also perused the order dated 31.1.1986 recorded by the Collector. It is seen that the Collector has forwarded the application submitted by the petitioner to the State Government for regularising the said lease. The said application was sent back to the Collector by the Government with a direction to remove the encroachment forthwith as the Government has refused to accept the Darkhast for regularization of the said construction even on payment of penalty. Therefore, the Collector has rejected the application dated 6.6.1981 submitted by the petitioner and informed the petitioner accordingly. From the record of the case it can also be seen that the Additional Chief Secretary while recording the order on the revision filed by the petitioner has observed that gauchar land ought not to have been used for construction at the cost of the village people. It was also observed in the said order that the Revenue Officer was unable to protect the gauchar land is also the subject matter of serious concern. Therefore the Additional Chief Secretary, Revenue Department, rejected the revision.

7. I have examined both the aforesaid orders. There is no manner of doubt that though the lease was granted

to the petitioner's father and that he has made construction over it, that by itself does not mean that he was granted lease permanently. Unless the structure is regularized he cannot claim permanent lease hold right on the said land. On further perusal of both the impugned orders, I find no infirmity or illegality committed by both the authorities in recording the impugned order, requiring any interference with the same while exercising powers under Article 226 of the Constitution of India. It must be remembered that while exercising powers under Article 226 of the Constitution of India this court is not sitting in appeal or revision against the impugned orders recorded by quasi judicial authorities. It is also settled legal proposition that order recorded by any quasi judicial authority cannot be interferred with unless it is shown to be perverse, capricious, unjust or illegal.

8. In view of this, I am of the opinion that there is no merit in the petition and it is liable to be rejected. In the premises, the petition stands rejected with no order as to costs. Rule is discharged. Ad-interim relief granted earlier shall stand vacated.

(karan)